

NATURAL RESOURCES BOARD

MINUTES

The Natural Resources Board met via teleconference at 8:00 a.m. on Tuesday, January 31, 2006, in Room G09 of the State Natural Resources Building (GEF 2), Madison, for action on Item 1.

Gerald O'Brien (Stevens Point)	Dan Poulson (Palmyra)
Herb Behnke (Shawano)	Steve Willett (Phillips)
Chris Thomas (Stevens Point)	John Welter (Eau Claire)

Absent –Jonathan Ela

Order of Business

1. Reconsideration in response to legislative comments regarding the adoption of Board Order WM-29-05, revisions to NR 10 pertaining to deer hunting season and regulations.

Tom Hauge, Director, Wildlife Management Bureau introduced the item. On January 26th, 2006, the Department received from the Assembly Committee on Natural Resources a letter requesting that the Department consider modifications to CR 05-086 (the 2006 Deer Season Rule.) We want to reiterate our support for the 2006 Deer Season Rule that you adopted in December, 2005. That package was the consensus product of great effort and tremendous input of every major deer hunting group in the state. It moves in the direction of cooperative management, simplified hunting periods and seasons. It contains many changes that will greatly reduce tagging confusion, increase opportunity for hunters, and promote shared use of resources of public and private land. The Department's preference is that we could implement the original rule. Regrettably, we do not believe that is possible. The Senate and Assembly committee chairs have indicated that rule modifications are required if the rule is to be approved by their committees. Their approval is needed by February 15th if we are to implement the changes for the 2006 seasons. While modifications will reintroduce some regulation complexity, we believe the remaining benefits of this rule proposal are strong enough that the NRB should modify the rule to address outstanding concerns and make a final attempt to get legislative approval before the February 15th deadline. After considering the legislative requests, getting input from the stakeholder organizations that helped construct the original rule and our internal deer management committee, the Department recommends that the NRB adopt the following modifications:

- 1) Move the 2-day youth hunt from its start date of 7 days following the start of the bow season to a start date the Saturday closest to October 8th.

- 2) Conduct the 4-day antlerless hunt north of Hwy 8 only in Herd Control Units starting the second Thursday after the Thanksgiving Holiday.

Keith Warnke reiterated our support for the 2006 Deer Season Rule that you adopted in December 2005. That package was the consensus product of great effort and a tremendous amount of work by the staff and the stakeholder group.

Mr. Willett stated that the current proposal is excellent. This is a compromise that will get passed

Mr. Willett MOVED, seconded by Mr. Poulson adoption of the reconsideration in response to legislative comments regarding Board Order WM-29-05, revisions to NR 10 pertaining to deer hunting season and regulations.

Tim Andryk, DNR Attorney stated that some of the new modifications in this rule are items that the public hasn't had an opportunity to comment on such as moving the December hunt up a weekend and into the muzzleloader season.

The motion withdrawn to hear the public appearances.

Public Appearances

- A. **Steve Oestreicher**, Harshaw, Wisconsin Conservation Congress stated that that number 2 on the green sheet, conduct the 4 day antlerless hunt, North of Hwy 8 only in Herd Control Units starting the second Thursday after the Thanksgiving Holiday. Last year only four units north of highway 8 would have qualified for the hunt. He stated the hunters north of Hwy 8 will not be satisfied with this proposal. He is

concerned that in two more years there will be another fight with the Wisconsin Snowmobilers' Association because herd numbers will increase across the North and all units will qualify as herd control units. There are already at least 15 landowners who stated that they will close their land to snowmobiling. The legislative action thus far is nothing more than trying to micromanage deer season structure and is about nothing more than politics, money, and power. At the 2005 spring hearings question number 44 received 75% approval rating from the public. The Conservation Congress is recommending that the original proposal should remain in tack. The land owners will have final say in this matter.

- B. George Meyer**, Madison, Wisconsin Wildlife Federation and Wisconsin Muzzleloading Association stated that they support moving the youth hunt. They do not support moving the bowhunting season or moving the 4 day hunt in December. There hasn't been input by the muzzleloading groups. He thinks the 4 day hunt should be as outlined in the initial proposal.

Mr. Welter asked about the possibility of having the muzzleloading season during the 2nd weekend in December.

Mr. Meyer said that they would have to go back and talk to the group. There hasn't been time to consult with them.

- C. Greg Kazmierski**, Waukesha, Wisconsin Deer Hunters Coalition is in opposition because it still includes an earn a buck proposal. However, they concur with the WWF and Muzzleloaders and oppose the current proposal. Herd control in the North can be managed in the North with issuing more antlerless tags during the regular season.

- D. Bob Jentz**, Madison, Wisconsin Snowmobilers Association stated that he doesn't think that this compromise will be accepted by the legislature.

Mr. Willett MOVED, seconded by Mr. Poulson adoption of the reconsideration in response to legislative comments regarding Board Order WM-29-05, revisions to NR 10 pertaining to deer hunting season and regulations.

Dr. Thomas asked for clarification moving youth season back and keeping north the same in herd control units.

Mr. Warnke stated that is correct.

Mr. O'Brien asked how many units will be herd control units next year.

Mr. Warnke stated that last year there were six. There could be six, 12, or 20. We don't know yet. There are 44 units in the North. We don't have a handle on a number yet.

Dr. Thomas stated the problem with this proposal is that we don't know how many units it's going to be.

Mr. Willett stated that our number one priority is herd control. The extended season doesn't affect the snowmobile season, just their preparation season. It will be inconvenient, but won't affect their season.

Mr. Behnke stated he doesn't think that the preparation season is an adequate argument. It doesn't matter to the landowner when the trails are prepped as long as the crops are harvested. The DNR and the NRB supports all outdoor recreation activities, however our priority is to manage the resource.

The motion carried unanimously by all members.

2. Information Item – Lac du Flambeau Band Treatment as a State – Clean Water Act Program Authorization Application

Mike Lutz, DNR Attorney stated that at the January 25, 2006 meeting, the Natural Resources Board expressed an interest in having a further discussion on the issue of the application for treatment as a state status by the Lac du Flambeau Band of Lake Superior Chippewa Indians. The role of the Department and the State in commenting on a tribal application to administer its own water quality program under the Clean Water Act. The federal regulation soliciting comments reads as follows: The regional administrator shall provide 30 days for comments to be submitted on the tribal application. Comments shall be limited to the tribe's assertion of authority" see 40 C.F.R. 131.9(c)(3). He discussed the arguments made before the Seventh Circuit Court of Appeals in the Mole Lake treatment as a state case.

Mr. Willett stated that the DNR is a delegated agency for the purpose of implementing the Clean Water Act.

Mr. Lutz stated that is correct. The DNR needs to show preexisting authority over waters which is easy for us, but the tribe must make the same showing of jurisdiction of waters on the reservation before they can accept that delegation.

Mr. Willett asked if we currently have authority of waters on reservations.

Mr. Lutz stated we do not. We have argued for that, but EPA has refused to do that.

Mr. Willett asked if the proposal includes affecting waters that run off the reservation and into the reservation.

Mr. Lutz stated it is only water quality standards on reservation waters, but by federal law it does affect upstream dischargers. It is similar to how Wisconsin must take into account Illinois water standards.

Mr. Willett asked if Illinois can have less stringent regulations on discharge on waters that flow into Wisconsin

Mr. Lutz stated no.

Mr. Willett stated that the zero discharge is the problem.

Mr. Lutz stated that is a concern if the tribe proposed that. They have not at this time.

Mr. Willett stated that we have a written agreement with EPA.

Mr. Lutz stated that the delegation of authority over the state is in writing.

Mr. Willett asked if the EPA has given us the authority to carry out the regulations.

Mr. Lutz stated currently we do not make decisions on reservations, EPA makes Clean Water Act decisions on reservations nationwide.

Mr. Willett stated not there is the issue that one jurisdiction can affect another jurisdiction.

Mr. Lutz stated that the principle is that it's a matter of federal law. Our ability to clean water act is circumscribed by federal law.

Dr. Thomas asked if the DNR isn't involved in this decision making process why did the letter extending the comment period go to Secretary Hassett.

Mr. Lutz stated that the DNR representing the governor wrote the letter to seek an extension.

Mr. Willett asked why the EPA wrote the Governor.

Mr. Lutz stated initially because the EPA was seeking comments from the State of Wisconsin.

Dr. Thomas asked who the EPA writes to when we aren't following the Clean Water Act.

Mr. Lutz stated that then the EPA writes to us because we are the delegated agency that implements the Clean Water Act for the State. For comments they write the governor's office.

Mr. Willett asked about the original question on the letter.

Mr. Lutz stated that he didn't have a copy of the letter. It was a notification letter telling the governor that the Lac du Flambeau applied for treatment as a state.

Mr. Willett asked if he understands the dilemma this puts the Board in that they were not consulted about this request. The DNR is the agency that is supposed to implement this Act that will come in conflict with the tribes.

Mr. Lutz stated he agrees that the fall out will come to the DNR.

Mr. Willett asked if we can tell the EPA that anytime there is conflict between the tribes and the DNR, we will send it to the EPA to handle.

Mr. Lutz stated we can suggest that, but it's the governor that is preparing these comments. That it's dictated by federal law.

Mr. Willett stated that we don't have to be the ones to enforce the law.

Dr. Thomas asked why the Department can't make a comment.

Mr. Lutz stated that as a cabinet agency.

Dr. Thomas stated it's not a cabinet agency, just a cabinet secretary.

Mr. Willett agreed it's not a cabinet agency. There is a big difference.

Mr. Lutz stated that is not my call whether the Department makes an independent comment. That will have to go up through my chain of command.

Mr. Willett asked his chain of command is.

Mr. Lutz stated up through the Secretary's office.

Mr. Willett asked who policy direction comes from.

Mr. Lutz stated either from the Secretary or the Board.

Mr. Willett stated that it doesn't just come from the Secretary's office. He suggested that we appeal this to the EPA and then go to the supreme court for an appeal if necessary. If the DNR accepts the role of the designated agency it takes the position that we have the authority to do that and other states should not have the ability to interfere with our regulations.

Mr. Lutz stated that it has been long standing federal law that a state cannot have a discharge that impacts another state's water quality standards.

Mr. Willett stated that the tribe doesn't have the technical expertise or resources to provide permits. If we allow that to happen we are allowing a political decision to affect the quality of the natural resources. He asked if he thinks there is liability on our part if the tribes set standards that are damaging to the state.

Mr. Lutz stated that he wouldn't use the word liability, but there could be impacts. We need to take the tribal water quality standard into account. We will have to work with the tribe and EPA. EPA has the ability to be the arbitrator.

Dr. Thomas stated there are two issues. One is the water quality oversight issue. The other issue is the separation of power issue that we address month after month. It's time for the legislature to take responsibility of what our authority is so we don't have to keep addressing this issue. One of the reasons a Board exists is so that all of these issues are clearly aired in the public eye. The public has another opportunity to weigh in before a decision is made. The public brought this issue to our attention at the last board meeting.

Mr. Behnke stated that Dr. Thomas is correct. There is a perception that the DNR is under the direction of the governor's office on policy at the exclusion to the NRB. He thinks that the statutes are clear in the responsibility of the Board. The Secretary reports to the Governor and the Department reports to the Board. The Department needs to understand that. He suggested that the Chairman carry out this responsibility on behalf of the Board to clarify on how the Department will function as it relates to its statutory responsibility to the Board and not to the Governor's office at the exclusion of the Board.

Mr. O'Brien stated that he agrees.

Secretary Hassett stated that he will be happy to discuss that, but he is the head administrator of the DNR and the agency reports to the Secretary in administrative matters.

Mr. O'Brien added "under the supervision of the Board" according to the statute.

Mr. Willett stated that Mr. Lutz fully understands what our position is and that he and Secretary Hassett can communicate that to the Governor.

Mr. Lutz stated that he does understand and he can.

3. Information Item – Legislative Proposal for Department Purchase of Land from Board of Commissioners of Public Lands and Establishment of a Land Bank.

Laurie Osterndorf, Administrator, Land Division stated that a group of legislators recently announced a plan for conveyance of up to 12,000 acres of land owned by the Board of Commissioners (BCPL) to the Department of Natural Resources. Included in the proposed legislation is the allocation of \$2,000,000 in Stewardship funding for this propose in each of the four fiscal years from FY 2007 through FY 2010. There also is authority for establishment of a "land bank" for BCPL, a mechanism to hold sale proceeds received from the Stewardship funds and funds from other buyers of BCPL land for reinvestment in new land purchases by BCPL to consolidate and upgrade its holdings of timberland.

Richard Steffes, Real Estate Director, Facilities and Lands Bureau added that the current BCPL is conservation minded, but that could change.

Mr. Poulson asked where that puts us in the pecking order of tax liability.

Mr. Steffes stated that it depends on what the land is currently in. BCPL is tax exempt. Payment in lieu of taxes is the tax obligation.

Mr. Behnke asked about legislative response timeline about the deer season.

Secretary Hassett stated the drop dead date is February 15 for printing the regulations. It would revert back to the season we had last year if we don't make the deadline.

Mr. O'Brien asked if they could send it back to the Board again.

Secretary Hassett stated that yes they could or they could send it to JCRAR. Almost any action will push this past the February 15 deadline.

Mr. Welter thanked Mr. Behnke for his service on the Natural Resources Board.

The meeting adjourned at 9:20 a.m.